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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/560,898

03/23/2007

Serge Rochatte

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CLARK & BRODY

1090 VERMONT AVENUE, NW

SUITE 250

WASHINGTON, DC 20005

EXAMINER

ROBINSON, JAMES MARSHALL

ART UNIT

PAPER NUMBER

4148

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/560,898	<b>Applicant(s)</b> ROCHATTE, SERGE	
	<b>Examiner</b> James M. Robinson	<b>Art Unit</b> 4148	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/23/2007</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1, 6, 7, 8** are rejected under 35 U.S.C. 102(b) as being anticipated by **Wai-Chung (US 6,154,903)**.

**Regarding claim 1**, Wai-Chung discloses a device for positioning a patient (col. 1, lines 7-8) which has a plane of sagittal symmetry (fig. 2) and comprises a front leaning surface (26, 28) for the patient's abdomen and thorax (col 6, 37-40), bordered on either side by side faces (12, 13) characterized in that it is made in the form of a rigid or semi-rigid cushion (col. 7, lines 25-27) comprising:

- a placing surface (17), provided with an anterior edge, resting on the patient's thighs (fig. 2),
- a front leaning surface (28) rising above the placing surface (17) from the anterior edge and which, in the plane of sagittal symmetry, has a convex profile (17, 26, 28) to position the patient's spine in kyphosis (311, 312), this front leaning surface (28) opposite the anterior edge leading into a housing (18) for the support and lateral centering of the patient's head centered along the plane of sagittal symmetry,
- two side faces (12, 13) into which a clasping surface opens orientated in opposite direction to the front leaning surface (26, 28), to allow at least part of the

upper limbs to clasp the cushion against the patient's abdomen and thorax (note the positioning of the patient's arms in fig. 2).

**Regarding claim 6**, Wai-Chung discloses a device characterized in that the clasping surface (the "sides" of the device located between portions 122 & 126) is formed partly by the inner surface (the portion of 103 that is within the cavity) of the transverse cavity (124) leading into the two side faces.

**Regarding claim 7**, Wai-Chung discloses a device characterized in that it comprises an access passage (the open region parallel to 111 and 112 providing access to 124 cavity from the posterior face of the device) opening into the transverse cavity (124) and starting at the posterior face (lower flat surface) of the cushion extending between the placing surface (rear end) and the front leaning surface (128).

**Regarding claim 8**, Wai-Chung discloses a device characterized in that the housing (18) opens opposite the front leaning face (122) in a clearing (118).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 2-5, 9-10** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Wai-Chung (US 6,154,903)** in view of **Coonrad (US 5014375)**.

5. **Regarding claims 2-5**, Wai-Chung discloses all claimed limitations above but fails to teach the device is characterized in that the anterior edge comprises cut-out

passage for the abdomen; the placing surface is provided with two channels that extend over a limited distance to receive at least part of the patient's thighs; and that the front leaning surface is provided with two hollowed parts centered either side of the plane of sagittal symmetry extending crosswise as far as the side faces.

Coonrad discloses a resilient foam surgical pad for supporting surgical patients. The upper support surface (28) comprises a cut-out passage for the abdomen (18, 46). The upper support surface (28) may be provided with various limb receipt surfaces, such as a pair of surfaces (30, 32) for support of a patient's upper arms, and receipt surfaces for a patient's thighs (36, 38) (col. 5, lines 12-29)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Wai-Chung with the cut-out abdomen passage and limb receipt surfaces (for receipt of the arms and thighs of the patient) as taught by Coonrad. Coonrad provides motivation for the modification of the invention. Coonrad teaches that excessive bleeding is problematic when stabilizing a patient in an optimal lumbar kyphosis position while performing a medical procedure. (col.1, lines 35-51). The use of a resilient support comprising recessed abdomen and limb receipt surfaces serves to reduce bleeding while eliminating or at least greatly reducing abdominal pressure (Coonrad: col. 2, lines 50-56).

**Regarding claim 9**, Wai-Chung discloses the support is formed from a relatively firm but not rigid foam material such as polyurethane. The use of -for example- broadens the scope of the claim. It would have been obvious to one of ordinary skill in the art to substitute the use of one polymer based foam for another.

**Regarding claim 10**, Wai-Chung discloses that the device is characterized in that a cushion (1) is provided with a protective cover allowing its decontamination (col. 7, lines 31-32).

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Zajas; (US 5632050), Wall (US 4944059), EIDAM (US 3009172), Bechtold (US 5893183), Hernandez (US 6324710).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James M. Robinson whose telephone number is (571) 270-3867. The examiner can normally be reached on Mon-Fri 7:30 AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrell McKinnon can be reached on (571)272-4797. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James M. Robinson

March 12, 2008

***/Terrell L Mckinnon/***

***Supervisory Patent Examiner, Art Unit 4148***